S.B.Civil Revision Petition No.41/2007

Amba Lal.
vs.
Purushotam.

Date : 25.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.RR Vyas, for the petitioner.

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Heard learned counsel for the petitioner.

The plaintiff/petitioner filed suit for specific performance of contract alleging that in pursuance of the agreement for sale, the plaintiff was put in possession and the plaintiff raised construction of the house on the plot in dispute.

The defendant/respondent submitted written statement and joined the issue by submitting that the plaintiff has not constructed the house nor he obtained permission from the Municipal Board as alleged by the plaintiff.

After filing of the written statement, both the parties submitted compromise before the trial court and submitted that the matter has been settled between the

parties and, therefore, the decree may be passed in favour of the plaintiff for specific performance of contract dated 4.1.2000 for the plot in dispute and it was agreed that in case, the defendant will not execute the sale deed in favour of the plaintiff within 15 days, the plaintiff will be entitled to execute the decree and get the sale deed executed through the Court.

The petitioner/defendant submitted an objection petition under Section 47 CPC and also submitted an application under Order 26 Rule 18A CPC. The petitioner's contention is that the petitioner though agreed for sale of the plot in dispute but never agreed to sell the building constructed over it, therefore, the executing court could not have dismissed the objection petition of the petitioner filed under Section 47 CPC without determining the question who constructed the house ? It is also submitted that the petitioner agreed to sell the plot in dispute only and for that the decree was granted and no decree was granted for sale of house and, therefore also, the executing court could not have proceeded to execute the decree so far as house is concerned. It is submitted that without determination of the rights in the house in dispute, the plot could not have been sold even by the Court.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the court below.

It is not in dispute that the plaintiff filed suit for specific performance of contract alleging that pursuant to the contract for purchase of the plot in question, the plaintiff was put in possession by the defendant and the plaintiff after obtaining possession raised construction of house over the plot in dispute. This issue was contested by the defendant consciously by submitting written statement but thereafter, by written compromise, the defendant agreed for passing of the decree in favour of the plaintiff for specific performance of contract dated 4.1.2000. Thereby, the issue which the petitioner wants to raise in the executing court was the issue involved in the suit itself and for that, the defendant by implication abandoned his case and, therefore, it appears that he agreed for passing a decree against him. If there was any right reserved by the defendant, then that should have been part of the decree itself and it cannot be by any implication. The executing court could not have gone into the question which was the question in the suit and as a pre-decree matter.

In view of the above, I do not find any illegality in the impugned order. No ground is made out for interference by this Court in its revisional jurisdiction.

In view of the above, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya